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May 30, 2003

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Docket # 01-75

Mr. Andrew S. Fishel
Managing Director
Office of the Managing Director
Federal Communications Commission
445-12th Street, S.W., Room 1-C144
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

Ms. Renee Licht
Deputy Managing Director
Office of the Managing Director
Federal Communications Commission
445-12th Street, S.W., Room 1-C144
Washington, D.C. 20554

Re: Emergency Request for Waiver of Filing Fees for
Certain Broadcast Auxiliary Modification Applications
Submitted on FCC Form 601.

Dear Mr. Fishel and Ms Licht:

This is an emergency request for waiver of the requirement of tendering filing fees with certain Part 74 Modification applications filed on FCC Form 601. Specifically, the Society of Broadcast Engineers, Incorporated (SBE), in the interests of its members nationally, respectfully requests that the Commission permit Part 74 licensees to modify their existing Part 74 Broadcast Auxiliary licenses without tendering a fee therefor, to the extent that the modification applications provide information missing from the Commission's database. A filing fee would continue to be necessary for an application filed in order to correct erroneous information, or to otherwise modify an existing Broadcast Auxiliary license. However, information not in the database could be provided by licensees without requiring a fee therefor. As good cause for this waiver request, the following is submitted.

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In ET Docket No. 01-75, the Commission released a *Report and Order*, FCC 02-298, on November 13, 2002 (the R&O). That docket proceeding revised the Part 74 Broadcast Auxiliary Service (BAS) rules to update them and to permit more efficient technologies to be deployed in that Service. Among many other things, the R&O created a specific, mandatory frequency coordination system prior to licensing of new or modified BAS facilities applicable to most fixed point-to-point Aural and TV BAS facilities. The new prior coordination procedures were modeled after the existing Part 101 procedures used for fixed microwave paths. The procedures involve both standard coordination processes and a prior notification procedure for co-channel and adjacent channel licensees in nearby geographic areas. This process presumes a valid and current database which would be used by the Part 74 coordinators. Although a reasonably complete database now exists for Part 101 facilities, this is not the case for Part 74 facilities, as was documented in the April 4, 2003 SBE Request for Temporary Stay of the prior coordination notice requirement. A mandatory PCN protocol presumes the existence of certain data in the ULS for Part 74 fixed point-to-point microwave stations, and such data is lacking for a substantial number of BAS records.

This is due to a number of historic factors. Principal among these is the fact that the old FCC form 313, used for many years, did not require information such as receive site coordinates, for example. Therefore, the database now does not include such information for a significant percentage of existing stations. While the new FCC Form 601 solves most of the missing information problem, the database is corrupted by both inaccurate and missing information. While the Commission staff has on recent occasion called for correction of database information by licensees, some information required to accurately conduct the new prior notification procedures and updated coordination processes is simply missing. It is simple to argue that it would be unfair to subject BAS licensees to an inaccurate and incomplete database, and therefore failed prior coordination efforts for new facilities, since incumbent licensees have had existing fixed studio-to-transmitter links and other BAS fixed facilities in place for many years and provided all information required at all relevant times to keep their license information up to date, but simply weren't required to provide certain information now critical. It is also unfair to new applicants who go through the process of applying for a new fixed BAS facility, only to find that there are receive sites which will suffer harmful interference because they were not in the database.

Another contributing factor here was the disconnect between broadcast licensing and BAS licensing processes over a long period of time. The database does not properly associate BAS licenses to the proper licensees. Those problems have been solved, but there is still extensive corruption in the database, consisting of erroneous, rather than missing, information.

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After the release of the ET Docket 01-75 R&O, the Commission entertained an SBE Request for Temporary Stay of the effective date of the new prior coordination procedures for fixed BAS facilities. SBE asked for additional time to allow BAS licensees to provide and correct BAS receive site information in the licensing database (ULS) to ensure that the new procedures effectively avert interference to existing systems. The Commission granted this stay for a period of six months, on April 15, 2003. The stay terminates October 16, 2003, unless otherwise extended.

SBE representatives met with Commission Wireless Telecommunications Bureau, Media Bureau, and Office of Engineering and Technology staff following the issuance of the stay, to determine the best way to fix the errors in the ULS BAS database, so that the prior coordination procedures could be made to work. Initially, SBE requested that the Commission permit, during a window period, non-feeable 601 applications to provide missing database information, including path azimuth and receive site information, and to correct errors in the database. The Commission staff, quite reasonably, did not want to simply allow any modifications to be filed, as such a process would be subject to abuse, and the process would require a large amount of WTB staff time to review each application separately to insure that the process was not abused.

What was ultimately determined to be feasible, instead, was to require that BAS modifications be filed and processed in the normal manner, but that Form 601 modification applications filed for the purpose of providing missing information would not be subject to application fees. The fairness issue aside, the basic justification would be to provide licensees an incentive to provide receive site information not now in the database. The missing information is, as the Commission notes in the *Order*, DA 03-1141, released April 15, 2003, a legacy of pre-ULS licensing procedures which did not call for the missing information to be provided. The Commission agreed with SBE about this, and noted that "legacy database inaccuracies in the ULS could seriously affect the efficacy of prior coordination procedures, which was not anticipated when the *Order* setting these procedures was adopted." Thus, the Commission adopted an appropriate balance between the need for an accurate database to make the process work and the desire to implement quickly the benefits it believes are provided by the prior coordination procedure for fixed BAS facilities.

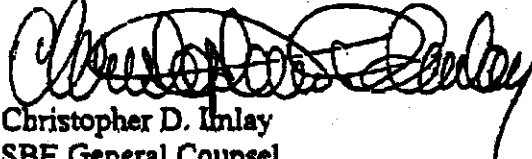
Therefore, given the foregoing, SBE respectfully requests that the Commission waive application filing fees for the class of modification applications in which an incumbent BAS licensee submits FCC form 601, seeking to modify its license only insofar as it provides missing database information regarding that facility. The Wireless Bureau has indicated that it might be possible to create any necessary fields not now in the Form 601 for electronic filing of these applications to provide the opportunity to submit missing receive site, azimuth, and other missing data.

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While SBE understands the difficulty in allowing non-fee modification applications for erroneous data in the ULS regarding Part 74 fixed BAS facilities, there remains a large number of inaccuracies in the database, also legacy-based. Therefore, it is also requested that the Commission also give serious consideration to at least a limited-time waiver of filing fees for modification applications which only correct erroneous data in the ULS for fixed Part 74 incumbent licenses. Correction of the database as to parent station information has already been permitted, so ownership information regarding the parent station would not be in the category of non-feeable modification applications.

Due to the limited duration of the Docket 01-75 Stay Order, this waiver request is being styled as an emergency waiver request. SBE requests that the Commission act on this request at the earliest possible time. Any questions regarding this should be addressed to the undersigned counsel.

Yours very truly,



Christopher D. Inlay
SBE General Counsel

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